



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

HD:hd  
Docket No: 02421-99  
8 February 2000

LCDR [REDACTED] USN  
[REDACTED]

Dear Commander [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 13 August and 12 October 1999, copies of which are attached. The Board also considered your letter dated 4 December 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the advisory opinions.

The Board found that the letter of instruction cited by the reporting senior was not a nonpunitive letter of censure which, per paragraph N-13.c, enclosure (2), Bureau of Naval Personnel Instruction 1610.10, is not to be mentioned in a fitness report. Contrary to the advisory opinion, they found the error in the reporting senior's statement that you were "Making progress on achieving EOOW [engineering officer of the watch] qualification," when you actually had achieved that qualification, was not a material matter warranting corrective action. They noted you may correct this error by means of submitting a statement to the contested fitness report. Despite evidence of problems in the engineering department before your tenure as engineering officer, the Board was unable to find that the reporting senior was incorrect in stating that your success was "primarily due to legacy of previous DH [department head] and outstanding senior enlisted personnel." Finally, they noted that the report at issue does reflect that the engineering department excelled.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

1610  
PERS-311  
13 August 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LT [REDACTED], USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual  
(b) CO, USS VANDEGRIFT (FFG-48) ltr 1200 FFG48/ADMIN ltr dated 13 Aug 97

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 11 April 1997 to 16 January 1998

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to make a statement. The member indicated his desire to make a statement, however, the member statement and the reporting senior's endorsement have not been received by (Pers-311). In accordance with reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement.

b. The fitness report is a Detachment of Reporting Senior/Regular report. Lieutenant [REDACTED] requests the removal of the report based on the errors of fact and the pre-judicial language included in the report.

c. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he/she must provide evidence to support the claim. I do not believe the Lieutenant [REDACTED] has done so. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

d. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular reporting period. The fact that different reporting senior's may view the performance of an officer differently is well established.

e. Whether or not weaknesses or shortcoming were discussed does not invalidate the fitness report. The member indicated informal counseling was provided by the Executive Officer.

f. Further review of the member's record revealed a fitness report for the period 17 January 1998 to 4 September 1998 missing from his record. If the member will forward a copy of the report we will place it in his digitized record.

g. Per reference (b), Lieutenant ██████████ was designated as Engineering Officer of the Watch.

h. The member does not prove the report to be unjust or in error.

3. We recommend partial approval of the member's request. We recommend deletion of the following bullet:

"Making progress on achieving EOOW qualification.

Head, Performance  
Evaluation Branch

**DEPARTMENT OF THE NAVY**

**NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000**

5420  
Ser 85/216  
12 Oct 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LT [REDACTED] USN [REDACTED]

Ref: (a) NPC-311 memo of 13 Aug 99

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of LT [REDACTED] request.

2. Without modification of his record addressed in reference (a), the overall quality and competitiveness of his record amongst his peers does not improve. [REDACTED] record was reviewed before the FY-00 Active Lieutenant Commander Unrestricted Line Promotion Selection Board and he was selected.

[REDACTED]  
BCNR Liaison, Officer Promotions and  
Enlisted Advancements Division